

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

In re Case Nos. 01-55472-JRG and  
01-55473-JRG  
CONDOR SYSTEMS, INC., a Chapter 11  
California corporation; and CEI  
SYSTEMS, INC., a Delaware Jointly Administered for  
corporation, Administrative Purposes Only  
Debtors.

ORDER ON ROBINSON, DIAMANT & WOLKOWITZ  
FINAL FEE APPLICATION FOR COMPENSATION

**I. INTRODUCTION**

Through its final fee application, Robinson, Diamant & Wolkowitz (RD&W) seeks final approval of \$2,136,247.50 in fees and \$166,811.59 in expenses. On March 23, 2004, the court ordered an audit of the RD&W fees. Having reviewed the audit report and the comments of RD&W, as well as the United States Trustee (UST), the request for final approval of fees and expenses is granted in part and denied in part as herein stated.

**II. GENERAL BACKGROUND**

The court notes that it is unable to reconcile either the amount of fees noticed, \$2,140,977.50, or the amount of fees

1 requested in the final application, \$2,136,247.50, with the amounts  
2 the court had previously approved on both a final and interim  
3 bases. According to the court's calculations, RD&W is seeking  
4 final approval of \$2,136,337.25 in fees.<sup>1</sup>

5 Prior to submission of the final fee application, the court  
6 had approved on a final basis, by an order dated October 22, 2003,  
7 fees in the amount of \$230,606.25, which are related to RD&W's  
8 first fee application. As for the second fee application, RD&W was  
9 awarded \$351,784.50 in fees on a final basis. However, with  
10 respect to the fees in the second fee application, there was a  
11 \$1,000 holdback for reconsideration as part of the final fee  
12 application. In addition, for the fees sought on the second fee  
13 application, fees requested in connection with issues pertaining  
14 to whether the Senior Discount Notes issued by the debtors were  
15 senior to the Senior Subordinated Notes issued by the debtors were  
16 awarded on an interim basis.

17 The court has received no further objection to the fees in the  
18 second fee application that are related to the Senior Discount  
19 Notes or to the \$1,000 holdback. The court will consider the fees  
20 awarded on the second fee application approved on a final basis.  
21 Having approved \$582,390.75 in fees on a final basis, the court  
22 will only consider \$1,553,946.50 in fees covering the third interim  
23 application

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24  
25 <sup>1</sup> This amount is comprised of: (1) \$230,606.25 awarded on a final basis on the first fee  
26 application; (2) \$351,784.50 awarded on a final basis on the second fee application; (3)  
27 \$326,032.50 awarded on an interim basis on the third interim fee application and reflecting  
28 a \$6,600 holdback which RD&W waives; (4) \$312,101.00 awarded on the fourth interim fee  
application; (5) \$388,325.50 awarded on the fifth interim fee application; (6) \$188,511.75  
awarded on the sixth interim fee application, plus the additional \$62,837.25 reserved for  
consideration at the time of the final fee application period of which \$4,430.00 is now being  
waived; and (7) \$280,568.50 for the seventh interim fee application.

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3 period through the final application period.<sup>2</sup>

4 As for expenses, by way of the final fee application, RD&W  
5 seeks final approval of \$166,811.59 in expenses. However, the  
6 court approved the expenses sought in the first and second fee  
7 application on a final basis in the amount of \$50,717.16. In  
8 addition, prior to commencement of the audit, RD&W filed a  
9 supplement to its seventh and final fee application reducing its  
10 expense request by an additional \$10,696.78. The supplemental  
11 filing stated that in its third and fifth interim fee applications,  
12 RD&W requested \$1,011.40 more in expenses than actually incurred.  
13 RD&W also stated that in reviewing other interim fee applications,  
14 \$9,685.38 was overpaid because the expenses were duplicated. Thus,  
15 RD&W seeks \$156,114.81<sup>3</sup> in expenses. Considering the expenses  
16 previously approved by the court on a final basis, the expenses  
17 being sought for final approval at this time total \$105,397.65, for  
18 the period from the third interim application through the final fee  
19 application.

20 **III. FEES**

21 The court gave the parties an opportunity to respond to the  
22 audit report submitted to the court on July 29, 2004. From the  
23 outset, RD&W agrees to reduce its fees in the amount of \$24,318.50.  
24 This amount includes:

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26 <sup>2</sup> In reviewing the audit report, the court took into account that the third interim  
period began after May 31, 2002.

27 <sup>3</sup> The audit report states that there is an unidentified \$0.10 discrepancy in the amount  
28 requested; however, the court will consider before it the expense totals presented by RD&W in  
the final fee application and supplement.

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5 • \$243.00 for a task lacking a description [See Exhibit  
6 A];<sup>4</sup>

7 • \$5,451.75 for duplication in travel time entries [See  
8 Exhibit B-2];<sup>5</sup>

9 • \$3,485.00 for non-working travel billing in excess of  
10 50% of the hourly rate of the professional [See Exhibit  
11 G-1];

12 • \$2,988.75 of non-working travel which exceeded the six-  
13 hour limit in the court's order of December 18, 2001  
14 [See Exhibit G-2];

15 • \$12,150.00 related to billing errors [See Exhibit L].

16 In addition, RD&W agrees to a nonspecific reduction of  
17 \$25,000 to address any questions remaining after the audit and to  
18 obviate the need for further proceedings or expenses by any party  
19 or the court. However, the court has a duty to review each  
20 request and determine whether the requirements of the statute are  
21 met. In re Busy Beaver Bldg. Ctrs., Inc., 19 F.3d 833, 840-45 (3<sup>rd</sup>  
22 Cir. 1994); In re Berg, 268 B.R. 250, 257 (Bankr. D. Mont. 2001).  
23 Section 330 of the Bankruptcy Code provides that the court may award to  
24 a professional person employed under §§ 327 or 1103 reasonable  
25 compensation for actual, necessary services rendered and reimbursement  
26 of actual, necessary expenses. In determining the amount of reasonable  
27 compensation, the court considers the nature, the extent, and the value

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<sup>4</sup> All references to exhibits are to the exhibits that appear in the "Review and Analysis of Final Fee Application Submitted by Robinson, Diamant & Wolkowitz," which was filed with the court on July 29, 2004.

<sup>5</sup> RD&W states in its comments that this amount is \$5,451.25; however the audit report Exhibit B-2 reflects an amount of \$5,451.75.

1 of the of such services, taking into account all relevant factors. 11  
2 U.S.C. § 330(a)(3).

3 In reviewing the audit report, the court has concluded the  
4 following.

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7 **A. Double-Billing Entries Are Disallowed.**

8 In the audit report, \$10,083.00 in entries are questioned as  
9 potentially double billed. [See Exhibit B.] RD&W responds that it  
10 does not believe these items are double billed and that many  
11 entries, while similar, do not contain the same language.  
12 According to RD&W, review of original time records for selected  
13 entries cited show they were not duplicates and that given the  
14 case, it was normal to have similar services repeated.

15 The court has reviewed the entries in this category for the  
16 time period after May 31, 2002. In reviewing the entries, the  
17 court agrees with RD&W that there are a number of entries that  
18 appear similar but are different in either the description of the  
19 task or the time involved.

20 However, the court has identified \$3,272.00 in time entries  
21 in which there are duplicate entries in description and time  
22 attributed to the task. A review highlights that some of these  
23 entries are billed in separate time categories. Given the amount  
24 of other billing errors, the court will disallow \$3,272.00 in fees  
25 related to double-billing entries in the absence of a specific  
26  
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1 demonstration by RD&W that these are not duplicate time entries.<sup>6</sup>

2 **B. Vaguely Described Entries Will Be Disallowed.**

3 Exhibit C-1 outlines \$5,048.00 in entries related to  
4 conferences that appear vague in description. The court has  
5 reviewed the entries and concludes several entries after May 31,  
6 2002, in the amount of \$109.00, warrant denial for inadequate  
7 description. [See Exhibit C-1: 12/6/02 Chenetz; 2/4/03 Derac.]

8 The court has also reviewed the entries on Exhibit C-2, which  
9 are described as "Other Vaguely Described Activities." A total of  
10 \$27,514.75 in fees fall within this category. RD&W responds that  
11 the entries are sufficient when taken in the context of the fee  
12 application.

13 However, time entries are not simply to record the number of hours  
14 worked; they also should detail the type of work done. Regardless of the  
15 method of compensation and regardless of the type of professional fees  
16 at issue, the court must evaluate the complexity and necessity of work  
17 done on behalf of the estate in order to determine appropriate  
18 compensation. In re Poseidon Pools of America, Inc., 180 B.R. 718, 729-  
19 31 (Bankr. E.D.N.Y. 1995).

20 Of particular concern to the court are entries with vague  
21 characterizations of services performed with no detail concerning the  
22 general subject matter of correspondence between parties to the case. The  
23 court has reviewed these entries after May 31, 2002, and has  
24 \_\_\_\_\_

25 <sup>6</sup> The entries considered disallowed on Exhibit B-1 are: 6/7/02 Gasteier; 6/11/02  
26 Gasteier; 6/17/02 Derac; 6/26/02 Gross; 6/28/02 Chenetz; 7/11/02 Chenetz; 7/22/02 Gasteier;  
27 7/23/02 Gasteier; 7/26/02 Gasteier; 8/6/02 Gasteier; 8/7/02 Chenetz; 8/12/02 Gross; 8/14/02  
28 Gross; 8/15/02 Chenetz; 8/16/02 Gross; 8/28/02 Gasteier; 8/29/02 Gasteier; 9/19/02 Gross;  
10/15/02 Chenetz; 10/30/02 Chenetz; 11/25/02 Chenetz; 11/25/02 Gross; 12/18/02 Gasteier;  
1/29/03 Gasteier; 2/14/03 Gross; 3/11/03 Gasteier; 3/24/03 Gross; 3/26/03 Gasteier; 6/30/03  
Gross; 7/8/03 Gasteier; 7/15/03 Gasteier; 8/1/03 Gasteier; 8/29/03 Gasteier; 8/29/03 Gasteier;  
9/3/03 Starr; 9/30/03 Gasteier.

1 identified \$1,155.00 in entries that are denied due to a lack of  
2 adequate description of the service. [See Exhibit C-2: 7/15/02  
3 7/17/02, 10/1/02, 7/1/03, 8/18/03 Chenetz; 7/8/03, 7/10/03,  
4 11/6/03 Gasteier; 10/1/03 Wolkowitz.]

5 **C. A Review of Intra-Office Conferences And Outside**  
6 **Meetings And Conferences In Which More Than One**  
7 **Professional Attended Will Result In A Partial Denial Of**  
8 **Fees.**

9 The audit report identifies \$266,886.00 in fees that are  
10 related to intra-office conferences. [See Exhibit E.] In addition,  
11 \$120,275.75 in fees are identified for situations in which more  
12 than one professional attended an outside hearing or conference.  
13 [See Exhibit F.]

14 The Bankruptcy Court for the Northern District of California  
15 maintains Guidelines for Compensation of Professionals.<sup>7</sup> Guidelines 15  
16 and 16 provide:

- 17 15. **Conferences** - Professionals should be prepared to explain time  
18 spent in conferences with other professionals or  
19 paraprofessionals in the same firm. Failure to justify this  
20 time may result in disallowance of all fees related to such  
21 conferences.
- 22 16. **Multiple Professionals** - Professionals should be prepared to  
23 explain the need for more than one professional or para-  
24 professional from the same firm at the same court hearing,  
25 deposition or meeting. Failure to justify this time may result  
26 in compensation for only the person with the lowest billing  
27 rate.

28 Consistent with the District's guidelines, the general rule is that  
no more than one professional may charge the estate for intra-office  
conferences and meetings absent an adequate explanation. In re Bennett  
Funding Group, Inc., 213 B.R. 234, 245 (Bankr. N.D.N.Y. 1997); In re

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<sup>7</sup> The District's Guidelines for Compensation and Expense Reimbursement of Professionals and Trustees are available on the District's Web site at <http://www.canb.uscourts.gov>.

1 A.A.D.C., Inc., 193 B.R. 448, 450-51 (Bankr. N.D. Ohio 1996); In re  
2 Poseidon Pools of America, Inc., 180 B.R. at 731. This is equally  
3 applicable to the attendance by more than one professional at a  
4 conference or hearing.

5 The court is well aware of the complexity of the issues  
6 facing committee's counsel. In a complex case such as this one, no  
7 single professional is going to possess all of the skills to accomplish  
8 the necessary tasks. The estate is better served where multiple  
9 professionals with the required expertise are utilized. In these  
10 circumstances, some communication is required.

11 The court accepts RD&W's explanation with respect to multiple  
12 professionals at outside conferences and hearings. Most of the  
13 time entries involve at the most two professionals attending a  
14 conference. In addition, the time entries reflect that only  
15 professionals most involved in the case billed for their time.

16 As for intra-office conferences, the court has reviewed the  
17 entries and notes that there are a number of entries in which only  
18 one attorney billed for a particular intra-office conference.  
19 However, the court did evaluate those intra-office conferences in  
20 which more than one attorney billed. Taking the approach of  
21 considering the fees of the professional in these conferences with the  
22 highest hourly rate for conferences after May 31, 2002, the court  
23 calculated \$59,519.00 in fees attributable to these conferences. The  
24 court believes a 50% reduction is warranted given the total amount of  
25 fees related to intra-office conferences. Thus, the court denies  
26 \$29,759.50 in fees related to intra-office conferences.

27 **D. Administrative/Clerical Tasks Are Not Compensable By The**  
28 **Estate.**



1 According to District Guideline 18:

2 18. Administrative Task - Time spent in addressing, stamping and  
3 stuffing envelopes, filing, photocopying or "supervising" any  
4 of the foregoing is not compensable, whether performed by a  
professional, paraprofessional or secretary.

5 RD&W's employment and retention was to be in accordance with § 330  
6 of the Bankruptcy Code and the local guidelines of the court. Clerical  
7 services are overhead expenses and are not compensable under § 330(a).  
8 Sousa v. Miguel (In re United States Trustee), 32 F.3d 1370, 1374 (9<sup>th</sup>  
9 Cir. 1994). Services such as filing, assembling or compiling documents,  
10 organizing files, calendaring dates, making copies, faxing or  
11 transmitting, moving records, to name a few, are inherently clerical.

12 Exhibit H-1 of the audit report highlights \$14,285.25 in entries  
13 that appear to be administrative/clerical by paraprofessionals. Of this  
14 amount, entries of \$10,953.25 are for the time period after May 31, 2002.

15 RD&W responds that the services in Exhibit H-1 could not have been  
16 performed by staff with little or no substantive legal training and are  
17 related to the initial review and processing of documents produced in  
18 discovery. Having reviewed the entries on Exhibit H-1, the court notes  
19 that task descriptions include entries such as indexing documents,  
20 assembling exhibits, and preparing documents for copying. While the  
21 court accepts RD&W's explanation as reasonable in some respect, there are  
22 many entries that appear to be completely clerical in nature. Thus, the  
23 court will reduce the fees in Exhibit H-1 by 50% and deny \$5,476.63 in  
24 fees.

25 On Exhibit H-2 are entries by professionals that include task  
26 descriptions that are clerical. RD&W provides a generic response that  
27 identification of these items appears to be more a matter of the use of  
28

1 particular words. Reviewing the entries on Exhibit H-2, a number of  
2 entries after May 31, 2002, stand out as clerical.<sup>8</sup> The court denies  
3 \$846.50 in fees as clerical/administrative tasks.

4 Exhibit H-3 outlines \$7,422.00 in fees which are related to the  
5 scanning and imaging of documents performed by a paralegal assistant.  
6 RD&W responds that in order to facilitate the identification and  
7 retrieval of these documents, RD&W paid to have the documents scanned.  
8 It believed it was appropriate to hire someone in-house to do the  
9 scanning at a rate of at least \$30.00 per hour, in lieu of costs and risk  
10 to accuracy by outside scanning.

11 However, RD&W presents no evidence that outside scanning would have  
12 imposed a cost of \$30.00 per hour on the estate. In addition, there is  
13 no evidence that companies offering scanning services are inherently  
14 inaccurate in providing these services. The act of scanning documents is  
15 clerical in nature. Thus, the court denies the \$7,422.00 in fees related  
16 to document scanning.

17 **E. Further Reduction As Pointed Out By The UST Is Warranted**

18 Having reviewed the other fee categories in the audit, the court  
19 takes no further reductions for fees highlighted in the report. The UST  
20 states that RD&W had previously agreed to a reduction of \$180.00 related  
21 to "Image Documents Produced." No further description of this entry is  
22 provided and this appears to be related to an entry in RD&W's sixth fee  
23 application. RD&W did not include this amount as a reduction in its  
24 comment to the court. Accepting the UST's representation as accurate, a  
25 further reduction in fees of \$180.00 is warranted.

26 The total fees denied as part of the final fee application are  
27 \_\_\_\_\_

28 <sup>8</sup> The entries on H-2 are: 10/22/02 Aldrich; 8/2/02 Chenetz; 11/18/02 Chenetz; 6/21/03  
Gasteier; 9/10/03 Gasteier; 8/15/02 Gross; 9/17/02 Mason.

1 \$72,539.13.

2 **IV. EXPENSES**

3 The audit report highlights a number of questionable expenses  
4 reflected in RD&W's fee applications. In its comments to the audit, RD&W  
5 agrees that some expenses should be disallowed.

6 **A. Double-Billed Expenses Are Disallowed.**

7 Exhibit X of the audit outlines a number of expenses that appear to  
8 be duplicate entries. RD&W agrees that the items do appear to be double  
9 billed. Thus, the total request for reimbursement of expenses will be  
10 reduced by \$2,162.46.

11 **B. Fax Charges Must Comport With The Northern District's**  
12 **Guidelines.**

13 As for fax charges, outgoing faxes are outlined on Exhibit BB. RD&W  
14 agrees that there was \$49.80 in over-billing where faxes were charged at  
15 \$1.00 per page. In addition, the UST points out that RD&W had previously  
16 agreed to eliminate its request for expense reimbursement for outgoing  
17 faxes related to the seventh fee application period, which amounts of  
18 \$203.60. RD&W agrees with this reduction.

19 Outgoing faxes were charged at \$0.40 per page. [See Exhibit BB.]  
20 RD&W states that it "incurs significant expenses for telephone charges,  
21 paper, equipment, personnel and facilities in connection with facsimiles,  
22 and attempts to pass some of the costs onto clients." According to RD&W,  
23 a charge of \$0.40 per page represents a good faith attempt to not  
24 overstate the actual costs incurred by RD&W.

25 The District's Guideline 32 indicates that outgoing faxes should be  
26 charged as a phone call. This Guideline was developed after a review of  
27 the practices of a wide variety of law firms. The practices involving  
28 outgoing and incoming faxes were so disparate that it became obvious that

1 the actual cost was not the determining factor for the charge. The  
2 District then adopted Guideline 32 inviting the bar to present data  
3 substantiating the actual cost. None has ever been presented.

4 RD&W's explanation reflects that outgoing faxes include  
5 consideration of more than just the cost of a phone call. RD&W did not  
6 provide the court with any data demonstrating that this per page cost  
7 represents a good faith estimate of the actual cost of the fax. Thus,  
8 the court will reduce the fax expenses incurred after May 31, 2002, by  
9 50%, taking into account the overbilling of \$49.80, but allowing for the  
10 outgoing faxes in the seventh fee application. This results in a  
11 reduction of \$1,017.70.

12 Incoming faxes do not pose a problem. [See Exhibit CC.] RD&W billed  
13 \$0.20 per page for incoming faxes, which is in compliance with Guideline  
14 32.

15 **C. Travel Related Expenses For Incorrectly Posted Item Is Denied.**

16 Travel related expenses are outlined on the audit in the amount of  
17 \$21,659.22. [See Exhibit DD.] RD&W states that a reduction of \$137.50 is  
18 appropriate for an incorrectly posted item. In addition, as an exhibit  
19 attached to the comments submitted by RD&W, it has provided supplemental  
20 details concerning the expenditures listed in Exhibit DD. The court  
21 accepts RD&W's supplement as sufficient explanation of the travel related  
22 expenses incurred.

23 **D. All Other Expenses Are Allowed.**

24 RD&W has provided an invoice detailing the nature of an expense  
25 categorized on the audit as "Miscellaneous Expense." [See Exhibit EE.]  
26 The invoice details that the expense was incurred to obtain securities  
27 documents regarding the debtor. The court finds this expense to be  
28

1 sufficiently supported.

2 RD&W also confirms that the rate for photocopies was at \$0.20 per  
3 page. The court accepts RD&W's statement.

4 The court has reviewed all other expenses and does not believe any  
5 additional reductions are necessary. The request for expense  
6 reimbursement is reduced in the amount of \$3,317.66.

7 **V. CONCLUSION**

8 The court approves on a final basis fees in the amount of  
9 \$1,481,407.37, and expenses in the amount of \$102,079.99, for the period  
10 from the third fee application through the final application period.<sup>9</sup> The  
11 court denies \$72,539.13 in fees and \$3,317.66 in expenses. All fees and  
12 expenses that are denied are done so on a final basis.

13 DATED: \_\_\_\_\_  
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15 \_\_\_\_\_  
16 JAMES R. GRUBE  
17 UNITED STATES BANKRUPTCY JUDGE  
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27 <sup>9</sup> The total of all fees approved on a final basis is \$2,063,798.12, and the total of all  
28 expenses approved on a final basis is \$152,797.15, for a total of \$2,216,595.27 in fees and  
expenses.

Case No. 01-55472-JRG and 01-55473-JRG

UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
**CERTIFICATE OF SERVICE**

I, the undersigned, a regularly appointed and qualified Judicial Assistant in the office of the Bankruptcy Judges of the United States Bankruptcy Court for the Northern District of California, San Jose, California hereby certify:

That I, in the performance of my duties as such Judicial Assistant, served a copy of the Court's: **ORDER ON ROBINSON, DIAMANT & WOLKOWITZ FINAL FEE APPLICATION FOR COMPENSATION** by placing it in the United States Mail, First Class, postage prepaid, at San Jose, California on the date shown below, in a sealed envelope addressed as listed below.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on \_\_\_\_\_ at San Jose, California.

\_\_\_\_\_  
LISA OLSEN

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